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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/385,412 08/30/99 STURLA

J 5725.0470-01

EXAMINER
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HM12/0109

BAWA, R	PAPER NUMBER
ART UNIT	

1619  
DATE MAILED:

01/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/385,412

Applicant(s)

Strula et al.

Examiner  
Mr. Raj Bawa

Group Art Unit  
1619



☒ Responsive to communication(s) filed on Oct 18, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Art Unit: 1619

### Detailed Action

1. The Examiner has noted the applicant's representative's statement regarding the PTO's preferred layout for patent applications.
2. Claim 1 is still rejected under 35 U.S.C. 102(b) as being anticipated by Thomaidis et al. or WO 94/03510. Applicant's arguments filed on October 18, 2000 have been fully considered but they are not persuasive.

Applicant's representative states that claim 1 is directed towards a device and not a composition. Note that claim 1 is directed to an aerosol composition contained in ~~a~~ aerosol device well known in the art. Note that aerosol devices employed to deliver aerosol compositions are composed of (a) a container; and (b) a distributing device. In other words, the claimed device is conventional and nominal, absent evidence to the contrary.

Contrary to the applicant's representative's assertion, each and every element of claim 1 claimed is either identically disclosed by the cited art or clearly inherent to the disclosure thereof. In this regard, note that references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 U.S.P.Q. 545 (CCPA 1969).

In light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by claim 1 would have been obvious within the meaning of 35 U.S.C. 102(b).

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Raj Bawa whose telephone number is (703) -308-2423. The examiner can normally be reached on Tuesday through Friday from 7:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash, can be reached on (703) -308-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-2592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Bawa/LR

January 3, 2001



RAJ BAWA, Ph.D.  
PRIMARY EXAMINER